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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 14.9.2007.

Inder Singh .... Appellant.

vs

Malkhan Singh and others .... Respondents.

Judgment

Before : Hon'ble Mr. Justice R.S.Madan.

Present: Mr.Hemant Sarin,Advocate,for the appellant.
Mr.Pawan Malik, Advocate, for the respondents.

R.S.Madan, J.

This is plaintiff's appeal against the judgment and decree dated 23.8.2003, passed by Shri Ved Pal Gupta, Additional District Judge, Gurgaon, in Civil Appeal No.16 of 6.6.2003, vide which he upheld the order of dismissal of the civil suit passed by the learned Civil Judge (Junior Division), Gurgaon.

The facts.

The plaintiff- appellant has filed a suit for permanent injunction to the effect that he is owner and in possession of a Nohra situated within the abadi of Village Bhora Kalan, Tehsil and District Gurgaon, as detailed in para no.1 of the plaint and shown by letters ABCD in red colour in the site plan attached with the plaint by virtue of a registered sale-deed dated 22.9.1964. It is the case of the plaintiff- appellant that defendants are strong headed persons and they have threatened to encroach upon his plot illegally and forcibly. He has further pleaded that the defendants have started digging foundation in the plot in dispute and he has requested them several times to

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resist from their said illegal acts. But they prolonged the matter on one pretext or the other and finally refused to accede to his request, which led to filing of the suit.

Upon notice, the respondents- defendants filed their joint written statement. It was prayed by way of preliminary objections that the plaintiff has no locus standi to file the suit and it is not maintainable in the present form as the plaintiff is not in possession of any portion of the suit property. They have further pleaded that the plaintiff has not disclosed any cause of action for filing the suit and he has misled the court as he has not submitted the true and correct facts to the court. On merits, it was denied that the plaintiff is owner in possession of the Nohra in question and boundaries of the suit property are also stated to be incorrect. They have further pleaded that the predecessor-in-interest (vendor) of the plaintiff has no right to execute the sale-deed in his favour which is a forged and fabricated document. They have further pleaded that the suit property is owned and possessed by them through their ancestors for the last 60-70 years and the plaintiff has no right to restrain them from making use of their own property. With these averments, the defendants have prayed for dismissal of the suit.

Replication was filed by the plaintiff controverting the averments made in the written statement and reiterated the case as set up in the plaint.

Parties contested the suit on the following issues:-

1. Whether the plaintiff is owner in possession of Nohra in dispute? OPP
2. Whether the plaintiff is entitled to the relief of perpetual injunction as claimed in suit? OPP

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3. Whether the plaintiff has no locus-standi to file the present suit? OPD
4. Whether the suit is not maintainable in the present form? OPD
5. Whether the plaintiff has no cause of action to file the suit? OPD
6. Whether the suit is not properly valued for the purpose of court fee and jurisdiction? OPD
7. Relief.

After recording evidence of both parties, the trial court recorded a firm finding that the appellant had failed to prove his ownership and even possession over the suit property and dismissed the suit of the plaintiff.

Aggrieved by the impugned judgment and decree of the trial court, the plaintiff filed the appeal before the first appellate court, who also did not find favour with the plaintiff and dismissed his appeal.

The plaintiff- appellant has challenged the impugned judgments and decrees of the courts below in this regular second appeal.

This case is based on appreciation of evidence and facts brought to the notice of the courts below. It is not a case of misinterpretation of any evidence by the trial court as well as by the first appellate court.

Learned counsel for the appellant contended that no doubt the learned trial court framed the issue whether the plaintiff is owner in possession of Nohra in dispute and some of his witnesses have deposed that the defendants are in possession of the suit property, therefore, the plaintiff may not be entitled to the relief of injunction. But the findings of the courts below that the plaintiff is not the owner of the Nohra in question are not

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sustainable. It has been categorically observed by the trial court that the plaintiff has been able to prove the execution of the sale-deed in question but he has not been able to examine his predecessor-in-interest (vendor) from whom he had got the sale-deed executed. Therefore, the finding with respect to not declaring the plaintiff as owner of the suit property is not sustainable.

On the other hand, learned counsel for the respondents contended that there is categorical stand of the respondents in the written statement that predecessor-in-interest of the plaintiff has no right to sell or transfer the nohra in question and that the sale-deed is forged and fabricated document, therefore, it does not create any title in favour of the plaintiff-appellant. It is also admitted by PW3 Musadi Lal produced by the plaintiff, who has deposed that "*Malkhan Singh has been coming in possession of the suit property for the last 30-35 years.* But later on he corrected himself and again deposed that *"Malkhan Singh has been coming in unauthorised possession of the suit property for the last 4-5 years."* Since the plaintiff-appellant has failed to prove on the record that he was in possession of the suit property, the suit for permanent injunction was not maintainable.

No substantial question of law arises for determination in this appeal. The findings of facts have been recorded by the courts below that the plaintiff has failed to prove his possession over the suit property and during his cross-examination also he has not only admitted the possession of the defendants but has also admitted the correctness of the site plan Ex.D1.

No doubt, the finding on issue no.1 recorded by the trial court may not be in a proper form but the defendants have been agitating their

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claim before the trial court with respect to that the predecessor-in-interest of the plaintiff was not the owner of the suit property. In that event, it was incumbent upon the plaintiff to have examined the vendor through whom he has derived the title of the nohra in question. Non- examination of the material witness of the plaintiff- appellant raises an adverse inference against him, leading to dismissal of his suit and appeal.

In view of my above sequel discussions that no substantial question of law is involved in the present appeal, the same is hereby dismissed.

14.9.2007. (R.S.Madan)
vs. Judge.